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|-----------------------------|-------------|----------------------|---------------------|------------------|
| APPLICATION NO.             | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/092,095                  | 03/06/2002  | Brian Bates          | 8627-051            | 8504             |
| 7590                        | 07/06/2009  |                      | EXAMINER            |                  |
| J. Matthew Buchanan         |             |                      | SEVERSON, RYAN J    |                  |
| BRINKS HOFER GILSON & LIONE |             |                      | ART UNIT            | PAPER NUMBER     |
| P.O. Box 10395              |             |                      |                     | 3731             |
| Chicago, IL 60610           |             |                      |                     |                  |
|                             |             |                      | MAIL DATE           | DELIVERY MODE    |
|                             |             |                      | 07/06/2009          | PAPER            |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                                     |
|------------------------------|--------------------------------------|-------------------------------------|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/092,095 | <b>Applicant(s)</b><br>BATES, BRIAN |
|                              | <b>Examiner</b><br>Ryan J. Severson  | <b>Art Unit</b><br>3731             |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 May 2009.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 40-47, 49, 50 and 73-90 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 40-47, 49, 50 and 73-90 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All      b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date, \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 40-47, 49, 50 and 73-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Summers (6,080,191) in view of Herweck et al. (6,010,529), Lentz et al. (5,843,166), and McCrory (5,951,599).** Summers discloses several stent patterns (see figures 1-5 and 21). The embodiment of the stent in figures 1-5 is formed from a single wire (column 3, line 65), has ring segments joined by curved regions, and adjacent rings are interleaved. The embodiment in figure 21 has a longitudinal support and is formed from a flat sheet of material. Summers states that a graft material may be attached to any of the disclosed stent frames to seal an aneurysm (column 11, lines 25-52), but Summers fails to disclose the means of attaching the graft to the stent frame.

4. Attention is drawn to Herweck et al., who teach attaching a graft to a stent by folding the ends of the graft over the stent (see figures 3A-3C). Therefore, it would have been obvious to configure the graft of Summers in the manner taught by Herweck et al.

to provide a secure connection between the stent and graft. This configuration minimizes the contact between the stent and blood.

5. The combination of Summers and Herweck et al. as set forth above fails to disclose the layers of the graft (in the folded portion) are affixed to one another and not to the stent. Attention is drawn to Lentz et al., who teaches attaching inner and outer layers of graft material to one another and not the stent (see figure 3) to prevent generation of shear forces on the layers of the graft, thus preventing delamination of the layers of the graft or tearing of the graft (see column 5, line 66 through column 6, line 5). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have secured the double-layer portion of the folded graft of the combination of Summers and Herweck et al. to one another and not to the stent in the manner taught by Lentz et al. to prevent delamination or tearing of the graft.

6. The combination of Summers, Herweck et al., and Lentz et al. as set forth above does not disclose the graft material only covers a portion of the stent circumference. Attention is drawn to McCrory, who teaches a graft can extend only a partial circumference to be intended to treat an aneurysm. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the graft of the combination extend only about 1/4<sup>th</sup> of the circumference of the stent, as taught by McCrory, to allow the graft to seal an aneurysm from the vessel.

7. Regarding claim 73, Examiner contends suturing the layers of graft material together would be an obvious alternative to the bonding connection taught by Lentz et al.

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8. Regarding claims 76, 77, 82, 83, and 88-90, the combination of Summers, Herweck et al., Lentz et al., and McCrory as set forth above fails to disclose radiopaque markers on the stent. However, Examiner contends using radiopaque markers on stents is well-known and within the level of one of ordinary skill in the art to help position stents in the proper location.

9. Further regarding claims 76, 77, 82, 83, and 88-90, the combination does not disclose the specific location/orientation of the radiopaque markers. However, Examiner contends the placement of the radiopaque markers would have been obvious to try to one of ordinary skill in the art because the location of markers would be used to determine the orientation of the graft (which, as set forth above, only extends a partial circumference of the stent). Since this orientation would be required to, for example, seal an aneurysm, it would have been obvious to locate the markers as claimed to allow proper positioning of the stent and graft relative to the aneurysm.

### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan J. Severson whose telephone number is (571) 272-3142. The examiner can normally be reached on Monday - Friday 8:30-5:00.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. J. S./  
Examiner, Art Unit 3731  
7/2/09

/Anhtuan T. Nguyen/  
Supervisory Patent Examiner, Art Unit 3731